

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3425 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SURYAKANT BABURAO CHIKHLE

Versus

LIFE INSURANCE CORPORATION OF INDIA

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Appearance:

MR TR MISHRA for Petitioner

MR KAUSHAL THAKER for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/12/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. By this petition, the petitioner has challenged the order of the respondent dated 31st May, 1983 under which the petitioner was ordered to be dismissed from services after holding a departmental inquiry in which the misconduct alleged against him was found proved.

2. The counsel for the petitioner does not dispute

that against the order of dismissal challenged in this Special Civil Application a statutory appeal is provided. In the writ petition, the petitioner has failed to give out any reason whatsoever not to avail of the alternative remedy which is available against the impugned order. In para no.17 of this Special Civil Application, the petitioner has stated that he has no alternative efficacious remedy available, which as per the admission of the petitioner's counsel is incorrect. When statutory alternative remedy of appeal is provided against the order of dismissal made in disciplinary proceeding, the employee should have first availed of that remedy. The direct approach to this court against the order in such should be discouraged. This court should insist the parties first to avail the alternative remedy available and only after exhausting the same there may be justification to approach this court. That course has not been followed by the petitioner in this case. It is necessary to mention here that long back on 6th August, 1983, the respondents have raised an objection in the written statement that the petitioner has an alternative remedy of appeal. That was the first available opportunity for the respondent to raise this objection as rule has been issued in this case without hearing the respondent. Despite of this objection, the petitioner has not taken the course of alternative remedy available. Where an alternative remedy of appeal is provided against the order impugned before this court, the party should be insisted first to avail of that remedy. Where an alternative remedy is available normally the writ petition should not be entertained. Any reference is needed then it may have to the two decisions of the Supreme Court in the case of State of Goa vs. M/s. A.H. Jaffar & Sons reported in AIR 1995 SC 333 and in the case of B.M.R.D.A. Bombay vs. Gokak Patel Volkart Ltd. & Ors. reported in JT 1995(1) SC 155.

3. The petitioner has not given out any reason which justifies the entertainment of this writ petition directly before this court. This case also does not fall in the category of exceptional cases. It is a case of dismissal of an employee from the services on a proved misconduct in a departmental inquiry and in such cases more, proper and appropriate remedy is the appeal where it is provided. This court sitting under Article 226 of the Constitution has very limited power of judicial review in these matters more so, on the question where the penalty imposed is disproportionate to the guilt or not. The power of judicial review of this court is very very limited. So far as the appellate authority is concerned, it has power coextensive with the power of the

original authority, and as such, it can go on the question of adequacy or disproportionate etc. of penalty given.

4. The counsel for the petitioner has made a statement before this court that the petitioner will avail now the right of appeal against the impugned order, but the appellate authority will dismiss the appeal on the ground of limitation and secondly this court has protected him by granting interim relief under which he is continuing till date under suspension and getting subsistence allowance. So far as the apprehension of the petitioner's counsel of the dismissal of the appeal at the stage if it is filed by the appellant on the ground of limitation is concerned, it is not well-founded. When for all these years, the writ petition is pending before this court and this court is dismissing the same on the ground of availability of alternative remedy, the appeal filed by the petitioner has to be decided on merits by the appellate authority.

5. So far as the second contention raised by the counsel for the petitioner is concerned, the counsel for the respondent very fairly consented that the interim relief granted by this court in favour of the petitioner be extended till the appeal is decided. In view of this statement made by the counsel for the respondent, the second apprehension of the petitioner's counsel no more survives.

6. In the result, this Special Civil Application is dismissed only on the ground that the petitioner has alternative remedy of appeal against the order impugned in this Special Civil Application. However, it is made clear that in case, the petitioner files an appeal within a period of one month from today before the appellate authority, the appellate authority may not dismiss the appeal on the ground of limitation. The interim relief which has been granted by this court in terms of para no.18(c) shall continue till the appeal, filed by the petitioner is decided finally by the appellate authority. However, it is further made clear that in case the appeal is not filed by the petitioner within a period of one month from today, the stay order shall stand vacated automatically immediately on the expiry of the one month period. Rule is discharged. No order as to costs.

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